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Contents

		Paragraphs	*Page*
I.	General information about the United Republic of Tanzania	1–43	3
	A. History, geographical location and climate	1	3
	B. Population	2–3	3
	C. Political governance and administration	4–9	3
	D. Language	10	5
	E. The socioeconomic situation	11–7	5
	F. External economic context	18–19	8
	G. Poverty profile	20–43	8
II.	General framework for the protection and promotion of human rights	44–48	14
III.	Non-discrimination and equality	49–68	16
	A. Constitutional prohibition of discrimination	50	16
	B. Policy prohibition of discrimination	51–53	16
	C. Statutory prohibition of discrimination	54–67	17
	D. Judicial protection of the right to non-discrimination	68	20
IV.	The right to an effective remedy	69–92	20
	A. Courts of law	70–77	21
	B. Quasi-judicial bodies or tribunals	78–88	22
	C. The Commission for Human Rights and Good Governance	89–92	25

Annex**

** An annex is available for consultation in the files of the secretariat. It contains details of the international human rights instruments to which the United Republic of Tanzania is a party, declarations and action plans, constitutions, policies, legislation, jurisprudence, a selected bibliography, reports, concluding observations/recommendations and other official documents.

I. General information about the United Republic of Tanzania

A. History, geographical location and climate

1. The State party is located in Eastern Africa between Longitude 29° and 41° East, Latitude 1° and 12° South. As a semi-autonomous country within the State party, Zanzibar is located in the Indian Ocean; approximately 30 kilometres off the east coast of Africa, between Latitude 5 and 7 degrees south off the equator. Zanzibar consists of two islands, Unguja and Pemba, and several other smaller islands some of which are uninhabited. The United Republic of Tanzania is the largest country in East Africa, covering 946,166 square kilometres, within which Zanzibar covers an area of 2,654 square kilometres. Unguja, which is the larger island of Zanzibar, has an area of 1,666 square kilometres while Pemba has an area of 988 square kilometres.[1]

B. Population

2. The State party had a population of 44,928,923 million people in 2012 (Tanzania Mainland: 43,625,454, and Zanzibar: 1,303,569[2]) compared to 34.5 million people in 2002, when the fourth national census was conducted. Among the young population, children under the age of 18 constitute 50.1 per cent of the entire population of whom females are 48.6 per cent and males 51.4 per cent. The Mainland population is predominantly rural; 71 per cent of the populace live in rural areas and depend on the underdeveloped smallholder primary agriculture production. For its part, 54 per cent of the population in Zanzibar live in rural areas.

3. The population of Zanzibar increased from 640,685 in 1988 (1988 census) to 984,625 in 2002 (2002 census) and 1,303,569 (2012 Census); male 630,677 (48.38 per cent) and female 672,892 (51.6 per cent). The population was estimated to be 1,193,383 in 2008, projected from the 2002 National Population census. Of this population, 47,205 are under one year old and 217,168 are under the age of five (2008 Census) and for the 2012 Census 42,238 (male 21,290 and female 20,948) are under one year and 203,937 (male 102,309 and female 101,628) under the age of five.[3] In 2002 Census data, women were 502,006 (50.9 per cent) and in 2012 women were 672,892 (51.6 per cent).

C. Political governance and administration

4. The State party, which is currently divided into 30 regions, 25 in Tanzania Mainland and 5 in Zanzibar, is a democratic State that conducts elections every five years. The Mainland is divided into 169 Districts which are subdivided into divisions, wards and

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[1] Revolutionary Government of Zanzibar, *Comprehensive Multi-year Plan – Zanzibar, 2010–2014*. EPI/MoHSW Zanzibar, July 2009. Available on http://www.who.int/immunization_financing/countries/cmyp/Zanzibar_cMYP_2010-2014.pdf (accessed 23 November 2011).

[2] The Tanzania Population and Housing Census, 2012, was the fifth Census to be conducted in the State party since it got its political independence in 1961. Previous censuses with the population numbers are: 1967 (12,313,469); 1978 (17,512,610); 1988 (23,095,885); and 2002 (34,443,603). For further details about the population and the Census of the United Republic of Tanzania, visit www.nbs.go.tz.

[3] Revolutionary Government of Zanzibar, *Comprehensive Multi-year Plan – Zanzibar, 2010–2014*. Op. cit.

villages. The lowest government administrative structure in Tanzania Mainland is the Village in rural areas and the *Mtaa* (hamlet) in urban areas. At the highest level of public governance is the Executive manned by the President of the United Republic of Tanzania functioning through the Cabinet. The President is the chairperson of the Cabinet. There is also the legislature, the Parliament of the United Republic of Tanzania (popularly, known as *Bunge*) and the Judiciary (Court of Appeal of Tanzania down through the High Court of Tanzania to the Primary Court).

5. Zanzibar is divided into five administrative regions, three in Unguja and two in Pemba. Each region is subdivided into two districts, which make a total of ten districts for the islands. The lowest government administrative structure at the community level is the *Shehia*. At the apex level, there is the Zanzibar Revolutionary Council (Cabinet, which is popularly, known as *Baraza la Mapinduzi Zanzibar*), which constitutes the Executive (that is, the Zanzibar Revolutionary Government; or as it is popularly known, *Serikali ya Mapinduzi Zanzibar*). The head of the Government is the President of Zanzibar, who is also the chairman of the Revolutionary Council. Zanzibar has its own Legislature, the Zanzibar House of Representative (popularly, known as *Baraza la Wawakilishi Zanzibar*) and its Judiciary up until the High Court of Zanzibar. It shares the Court of Appeal with Tanzania Mainland.

6. The United Republic of Tanzania has 357 Members of Parliament in the Parliament of the United Republic of Tanzania, which holds its parliamentary sessions in Dodoma, the capital city of the country. The Parliament of the United Republic of Tanzania is composed of Constituency Members; Women Special Seats' Members (102 members), Presidential Nominees (2 out of 5 are women), Representatives from the Zanzibar House of Representatives and the Attorney General of the United Republic of Tanzania as an Ex Official Member. Currently, the ruling party, *Chama cha Mapinduzi* (CCM), has the majority of Members of Parliament, with a total of 259 seats in the *Bunge*. Opposition parties include *Chama cha Demokrasia na Maendeleo* (CHADEMA) with 48 parliamentary seats, followed by Civic United Front (CUF) with 36 seats, NCCR-Mageuzi with 4 seats, and Tanzania Labour Party (TLP) and United Democratic Party (UDP) with one seat each. The current Speaker is a woman.

7. The *Baraza la Wawakilishi Zanzibar* currently has 79 members, including the Second Vice President, who is the head of government business in the House.[4] Zanzibar underwent significant political reforms in 2010 through the 10th amendment to the Zanzibar Constitution, whereby, inter alia, the Government of National Unity (GNU) was established after a decade of political turbulence. This situation was a result of a referendum establishing a national unity government after the Tanzanian October 2010 elections, which were held in Zanzibar on 31 July 2010, whereby 66.4 per cent of the voters voted for the GNU. The referendum approved, inter alia, that the losing party in the elections would now be allowed to nominate the first vice-president, whereas the wining party would produce the president and second vice president. Under this new political arrangement, the second vice president is the head of government business, replacing the Chief Minister (*Waziri Kiongozi*). The number of registered voters was 407,655; 221,916 were females and 185,739 males.[5]

8. From April 2012 the State party embarked on the review of its current Constitution with a view to adopting a new one as envisaged under the Constitutional Review Act

[4] Available at http://www.zanzibarassembly.go.tz/modules/news/fileupload/store/2011-6-20-2-26-39_02032011.pdf (accessed 26 November 2013).

[5] Revolutionary Government of Zanzibar, *National Election Report 2010*.

(2011).[6] The constitutional review and re-writing process was overseen by the Constitutional Review Commission established under Section 5 of this law. The Constitutional Review Commission unveiled the first draft of the Constitution on 3 June 2013 that was discussed nationwide in the fora for constitutional review. These fora were established by the Constitutional Review Commission on an ad hoc basis based on the geographical diversity of the State party.[7] They discussed and provided their views on the Draft Constitution in July and August 2013.[8] Upon soliciting views of the people from all around the country, the Constitutional Review Commission submitted the second Draft Constitution to the President of the United Republic of Tanzania and the President of Zanzibar[9] on 30 December 2013, who subsequently gazetted it. On 18 March 2014, the second Draft Constitution was submitted to the Constituent Assembly[10] established under Section 22 of the Constitutional Review Act. The Constitution Assembly (CA) has finalised the deliberations on second Draft Constitution and submitted it to the President of the United Republic of Tanzania on 8 October 2014. It will subsequently be validated by a national referendum.[11]

9. In ensuring that equality is realised and non-discrimination between men and women is realised in all spheres of life, the Draft Constitution proposes to incorporate specific rights of women, children, the youth, the elderly and persons with disabilities. In order to achieve a 50-50 participation of women in political life, the Proposed Constitution further proposes that there shall be a male and female contestant in every constituent for the election of Members of Parliament.

D. Language

10. The official language in the State party is Kiswahili, which is widely spoken throughout the country. However, local vernaculars are spoken by different tribes, which number more than 120. Kiswahili is used as a medium of instruction in primary schools; while English is used as a medium of instruction in secondary education and higher learning institutions. English and Kiswahili are both accepted as the languages of communication in the workplace in both Tanzania Mainland and Zanzibar.

E. The socioeconomic situation

11. The economy in Tanzania Mainland depends heavily on agriculture, which accounts for more than 50 per cent of the gross domestic product (GDP). It also contributes to 80 per cent of exports and employs about 80 per cent of the workforce.[12] In 2009, the State party introduced the agricultural improvement/revolutionary programme, popularly known in its Kiswahili version as *Kilimo Kwanza*, which strives to transform agriculture into modern one. Through the *Kilimo Kwanza* Programme, the State party aims at achieving maximum productivity in agriculture through the following pillars:

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[6] Cap. 83 R.E. 2012.

[7] Ibid., Section 18(1) and (2).

[8] Ibid., Section 18(3).

[9] Ibid., Section 20(1).

[10] Ibid., Section 20(2) and (3).

[11] The Referendum shall be organised, supervised and conducted by the National Electoral Commission (NEC) under Sections 31–36 of the Constitutional Review Act.

[12] United Republic of Tanzania, *Participatory Agricultural Development and Empowerment Project (PADEP): Resettlement Policy Framework* Dar es Salaam: Ministry of Agriculture and Food Security, 2003, p. 1.

- Political will to support and put on the political agenda the agricultural transformation;
- Enhanced financing for agriculture;
- Institutional reorganization and management of agriculture;
- Paradigm shift to strategic agricultural production;
- Availability of land for agriculture;
- Incentives to stimulate investments in agriculture;
- Industrialization for agricultural transformation;
- Science, technology and human resources to support agricultural transformation;
- Infrastructure development to support agricultural transformation;
- Mobilization of Tanzanians to support and participate in the implementation of the *Kilimo Kwanza* Programme.

12. Tanzania Mainland also depends on the industrial sector, which accounts for 10 per cent of the national GDP. This is due to a number of challenges facing this sector, including inadequate electricity supply in the State party. In 2013/2014, 36 per cent of the total population had access to electricity: 11 per cent of the population in rural areas and 60 per cent of the population in urban areas had access to electricity. This situation is compounded by the fact that the State party's electricity generation depends on hydropower, which has been severely impacted by low levels of rainfall in the country and deterioration of equipment.

13. The State party, in Tanzania Mainland has put forth initiatives to transform its economy into middle income by implementing policies which inclined towards economic growth. Such policies are: five year Development plan 2011/12–2015/16, Long Term Perspective Plan (2011/12–2025/26), Tanzanian Development Vision 2025, National Strategy for Growth and Reduction of Poverty and the Big Results Now Initiatives.

14. The second National Strategy for Growth and Reduction of Poverty (NSGRP II, popularly known as MKUKUTA II, from Mkakati wa Kukuza Uchumi na Kupunguza Umaskini) is a continuation of the government and national commitments to accelerate economic growth and fight poverty. This is a results-based and Millennium Development Goals-based strategy adopted to sustain and scale up achievements as well as addressing the challenges to the growth and poverty reduction agenda. It is, thus, an organizing framework to rally national efforts for the next 5 years (2010/11–2014/15) to accelerate poverty-reducing growth by pursuing pro-poor intervention and addressing implementation bottlenecks. The strategy emphasizes the following key outcomes:

- Focused and sharper prioritization of interventions — projects and programmes — in key priority growth and poverty reduction sectors;
- Strengthening evidence-based planning and resource allocation in the same priority interventions;
- Aligning strategic plans of ministries, departments and agencies and local government authorities to this strategy;
- Strengthening the government's and the national implementation capacity;
- Scaling up the role and participation of the private sector in priority areas of growth and poverty reduction;

- Improving human resources capacity, in terms of skills, knowledge, and efficient deployment;
- Fostering changes in mindset toward hard work, patriotism, and self-reliance;
- Mainstreaming cross cutting issues in ministries, departments and agencies and local government authorities processes;
- Strengthening the monitoring and reporting systems; and
- Better implementation of core reforms, including paying strong attention to further improvement of public financial management systems.

15. The State party, on the part of Mainland, recorded an increase in the real GDP to 7 per cent in 2013 from 6.5 and 6.9 in 2010 and 2012 respectively. The increase in overall real GDP emanated largely due to improvement of sectors with a large share of GDP contribution including agriculture, construction, trade, mining and tourism.[13]

16. The Zanzibar Vision 2020 aims at, inter alia, eradicating absolute poverty and building a robust and internationally competitive economy for sustainable development of Zanzibaris. The main strategy that translates the Zanzibar Vision 2020 is the Mkakati wa Kukuza Uchumi Zanzibar (MKUZA), which was rolled out in 2007.[14] In between the period under report, the GDP has averaged between 5.4 per cent and 6 per cent; as of 2013, the total GDP increase to 7.4 per cent whereby the total National Income of Zanzibar has increased to TZS 878,403 million from 748,057 million in 2008 with the Zanzibari per capita income being pegged at TZS 728,361 and 1,077,000 in 2013.[15] Beyond the broad aspirations of the Vision 2020 of transforming and modernizing Zanzibar's economy and eradicating poverty, MKUZA II is a tool that the Revolutionary Government of Zanzibar will deploy to realize the Millennium Development Goals, improve living standards and strengthen good governance. Remarkable achievements have been made in the implementation of MKUZA I. Realizing that economic growth is necessary for social development, interventions that aimed at boosting economic growth paid off. The average real rate of economic growth was 6 per cent in the last three years. It peaked 6.7 per cent in 2009 against a target of between 8 and 10 per cent in 2010. On revenue collection, the target for revenue yield[16] set in MKUZA I (18.5 per cent of GDP) was achieved. This is a remarkable performance considering the economic turmoil that engulfed the world at the time due to global financial, fuel and food crisis.

17. The State party's commitment on the part of Zanzibar to accelerate economic growth and fighting poverty has been consistently implemented through a series of strategies and plans ranging from sector-specific strategies to multi-sectoral strategies, all of which geared towards economic growth and improved livelihood of the State party's citizens. Cluster II of MKUZA had 8 goals. One of the goals was to ensure an equitable access to demand driven quality education which is gender responsive. Operational targets and Strategic Intervention Packages were categorized into several groups, namely poverty eradication, health care, early childhood care and development, primary education, secondary education, tertiary education and social protection. Other categories included science and technology, non-formal education and vocational training.

[13] MAIR 13/14.

[14] See the Harmonisation of MKUZA and Sectoral Level Indicators, prepared by the Ministry of Finance and Economic Affairs (Zanzibar), February 2009.

[15] Serikali ya Mapinduzi Zanzibar, *Mapitio ya Hali Ya Uchumi ya Utekelezaji wa Mpango wa Maendeleo Zanzibar 2009 2010* Zanzibar: Serikali ya Mapinduzi Zanzibar 2010, p. 9.

[16] The proportion of actual revenue collected to GDP.

F. External economic context

18. Recent developments in the global economic conditions, such as the increase in oil and food prices, and global financial and economic crisis, will continue to have ramifications on the State party's economy. Such crisis impact the economy of the United Republic of Tanzania through several channels, with trade (especially exports) and financial flows (especially foreign direct investment) being the main transmission channels. Slowdown of growth, reduction in financial and capital flows, were the results of the first round effects of the crisis. The second round effects take place with a lag, especially in the real sector. Effects of increase in food and oil prices are reflected in surge for large scale land acquisitions for bio-fuel and food production. Much as such crisis threatens the economy of the United Republic of Tanzania, it also opens up several opportunities, e.g. in terms of increased demand for bio-fuel and food production.

19. Besides the crisis, policy developments at the global and regional levels have continued to shape the way the United Republic of Tanzania interacts with other economies. There are opportunities, and sometimes, constraints associated with the World Trade Organization (WTO), EPA, policies related to global climate change, etc. Development in regionalism, e.g. the East African Common Market, the South African Development Community, the Indian Ocean Ream Association (IORA), the Kagera Basin Organization, etc., are also among the forces that will continue to have significant impact on the economy of the United Republic of Tanzania. Opportunities associated with these developments include expanded trade, joint infrastructure development, and also non-economic benefits such as regional peace initiatives. Among the challenges relates to multi-belonging, which sometimes results in weak focus and conflicting objectives. In general, however, effects of these developments on trade, movement of labour and capital will be an important factor in the national development in the medium term to long term. These developments have provided lessons that informed the strategic positioning of NSGRP II.

G. Poverty profile

1. Reduction of income poverty

20. In order to assess achievements in the efforts to reduce Income Poverty, MKUZA I identified two targets. First is the reduction of the percentage of people below the basic needs poverty from 49 per cent in 2005 to 25 per cent by 2010. Second is the reduction of the percentage of people below the food poverty line from 13 per cent in 2005 to 10 per cent by 2010. According to the Zanzibar Household Budget Survey 2009/2010, basic needs poverty reduced to 44.4 per cent compared to 49 per cent in 2005, while the food poverty line remained at 13 per cent.

2. Projection of poverty rates

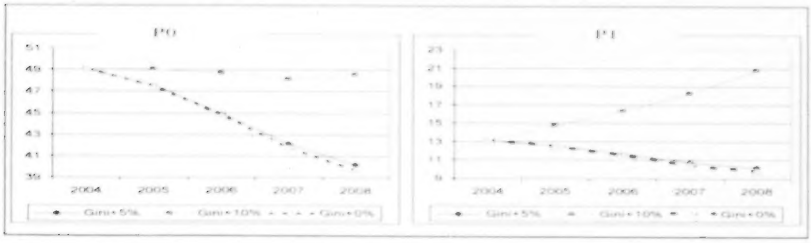
21. The first scenario upon which poverty rate is projected is based on an assumption that inequality did not change from 2004/05 to 2009, meaning that distribution of growth was neutral. Figure 1 shows these projections in which the Head Count Ratio declines from 49 per cent to 40 per cent and Poverty Gap ratio declining from 13.1 to 9.7. In Zanzibar the poverty gap ratio declining from 13.09 to 11.41.[17]

22. Based on this scenario, poverty did not decline to the level targeted by MKUZA I, from the Head Count Ratio of 49 per cent in 2005 to 13 per cent in 2010. Note that

[17] Household Budget Survey, p. 100.

MKUZA I did not use Poverty Gap as a target. This is a rather optimistic scenario because in a poor country, economic growth tends to be accompanied with some increase in inequality.

Figure 1
Projected poverty rate given the GDP and increasing inequality



Source: Zanzibar Human Development Report 2009

3. Poverty trend from unrepresentative sub-samples

23. Another approach of assessing the status and the dynamics of poverty is to use the sub-sample of household budget survey data for the months of June, July and August of 2004 and compare the poverty rate calculated from this sub-sample to the poverty rates calculated from the sub-sample of the household budget data collected in the corresponding months of June, July and August of 2009. Such exercise has been done by the Office of the Chief Government Statistician of Zanzibar in a bid to seek information to be used in the preparation of MKUZA II. As pointed out earlier, this approach has a serious weakness and is being used here because of the pressing need to determine the current poverty situation with an understanding that these unrepresentative samples give only very rough and imprecise indicators of poverty situation.

24. Using the sub-sample of unrepresentative data the percentage of people living below the basic needs poverty line has marginally declined from 43.7 in the three months of June, July and August in 2004 to 38 in the corresponding months of 2009. Using the more appropriate poverty index, namely the square of poverty gap index, poverty is found to have declined even more significantly from 4.2 to 2.41 over this period. Further, it is found that poverty has declined in the rural areas while there is a slight increase in poverty in the urban areas, signifying that poverty is increasingly becoming "urbanized". The data further shows that Pemba suffers more poverty than Unguja, but the gap is narrowing. When food poverty line is used together with the appropriate index of poverty gap squared, it is found that extreme poverty has not declined over the period. This indicates that the continuing increase in the prices of food staff is making those who are very poor fail to escape poverty and it is probably the reason that poverty is becoming more of the urban phenomenon - urban population depends on the markets for food while rural household grow at least some of the food they consume.

4. Trend of poverty 2005 to 2010: a verdict

25. The above analyses shows that the target of reducing the percentage of the poor by about 50 per cent between 2005 and 2010 was too ambitious as it is not easy to reduce income poverty by half within five years especially when GDP growth average target of 10 per cent by 2010 was itself not attained. There are two main channels through which income poverty could be reduced at the household level; the first one is through an increase in household income, through increasing employment opportunities in well-paying jobs; through increasing productivity particularly in the agricultural sector and; through the

expansion of income generating opportunities in general. The second channel for reducing income poverty is through the reduction in the cost of living. The last household budget survey for Zanzibar shows that food still occupies more than 50 per cent of the value of goods consumed by households per month. Domestic food production has not increased sufficiently to arrest the galloping food inflation which is further fuelled by the increasing prices of imported food. Measures that would reduce the cost of food would go a long way to reducing income poverty.

26. Because poverty is multidimensional, income alone cannot serve as an adequate measure for assessing poverty reduction interventions. Improved access to education, water and health services and reduction in maternal, child mortality and morbidity, increase in life expectancy and an expansion of democratic space are some of the other dimensions of welfare that are important. As would be shown below, there have been achievements in reducing poverty using non-income dimensions during MKUZA I. In the long run these achievements will most likely boost incomes of the poor.

5. Income poverty and challenges of income distribution

27. During the last ten years, GDP growth rate in the United Republic of Tanzania has been impressive. However, between 2000/01 and 2007 the incidence of income poverty did not change significantly. The incidence of income poverty shows, out of every 100 Tanzanians, 36 were poor in 2000/01 compared to 34 in 2007. Income poverty (basic needs and food poverty) was also variable across geographical areas, with the rural areas containing 83.4 per cent of the poor in 2007 compared to 87 per cent in 2000/01. Households engaged in farming, livestock keeping, fishing, and forestry, were the poorest. Rural growth per annum in the period, as proxy by growth of the agricultural sector was about 4.5 percent. When this growth is contrasted with the national population growth rate of 2.9 per cent the change in rural per capita income becomes small, thus perpetuating poverty situation in rural areas.

Incidence of poverty in the United Republic of Tanzania (poverty headcount index)

	Year	*Dar es Salaam*	*Other Urban Areas*	*Rural Areas*	*Mainland Tanzania*
Food	2011/2012	1.0	8.7	11.3	9.7
Basic Needs	2011/2012	4.2	21.7	33.3	38.2

Source: National Bureau of Statistics, Household Budget Survey 2011–2012.

28. Employment is the main link between growth and reduction of income poverty. According to the Poverty Human Development Report (2009), 630,000 new jobs were created annually between 2001 and 2006, mainly in the informal sector, which matches with labour force growth. However, the quality of jobs created is important in explaining the stagnation in poverty levels. The unemployment rate of person aged 15 and above declines slowly, from 12.9 per cent in 2006 (Integrated Labour Force Survey (ILFS)) to 11.7 per cent in 2007 (according to the Household Budget Survey). Unemployment among youth (aged 18–34) stood at 13.4 per cent in 2006 (ILFS 2006). It is highest among female youth — about 15.4 per cent compared 14.3 per cent for male youth (ILFS 2006). Moreover, women constituted 24.7 per cent of paid employees, 42.3 per cent of unpaid helpers, and 53.9 per cent of agricultural labour force and only 20 per cent of self-employed; moreover, the unemployment rate was higher for females than for males, except in the rural areas. In Dar es Salaam, the unemployment rate for females was 40.3 per cent in 2006, as contrasted to 19.2 per cent for males. In Zanzibar, the unemployment rate, according to the 2009/2010 Household Budget Surney, is recorded at 4.4 per cent and unemployment among youth population is 17.1 per cent.

29. The majority of those in poverty lack social protection, including the unemployed given the absence of unemployment or other benefits for those who lose their jobs. Affordable measures to address the lack of protection among the unemployed, the self-employed and the vast majority of workers who are involved in informal sector activities remains one of the challenges in ensuring social security. The challenge is linked to the fact that 94 per cent of the Tanzanian labour force works in the informal sector. This has implications for both the size of the revenue base and the type of policy interventions geared to extending social protection in the United Republic of Tanzania.

30. In Tanzania Mainland, the Tanzania Social Action Fund (TASAF) III was introduced in January 2014, to facilitate achievements of TASAF II by using community driven needs approach to facilitate implementation of public works, income generating activities for the poor and vulnerable groups. The main objective is to enable poor households to increase incomes and opportunities while improving consumption. Direct beneficiaries are people currently living below the basic need poverty line. The support is focused on the poor and vulnerable households as well as those temporally affected by short term shocks. These people receive safety net support as well as the opportunity to participate in livelihood enhancing activities. According to Zanzibar Socioeconomic Survey 2013, about 64.8 per cent of the population is engaged in the formal Sector and 24.9 per cent are in informal sector with inadequate social protection. TASAF III in Zanzibar established the poverty reduction program which covers about 6,000 household with social security in all 10 Districts of Unguja and Pemba. Zanzibar also developed Social Protection Policy 2014 which ensure the provision of social security for vulnerable groups and informal sector as well as emphasize the establishment of Universal Pension. About 11,151,000 elderly received monthly pension for their daily subsistence in terms of the cash transfer.

31. In terms of sources of livelihood, the share of household farm income declined from 51.4 per cent in 2000/01 to 39.7 per cent in 2007. Correspondingly, the share of non-farm incomes increased although not to the extent of leveraging people out of poverty. Poverty incidence among government or parastatal employees is around 10 percent, and it is 20 per cent among other paid employees. A higher percentage in the latter indicates inadequate decent jobs in terms of adequate pay in those sectors, particularly in the private sector.

6. Overall GDP growth and the GDP structure

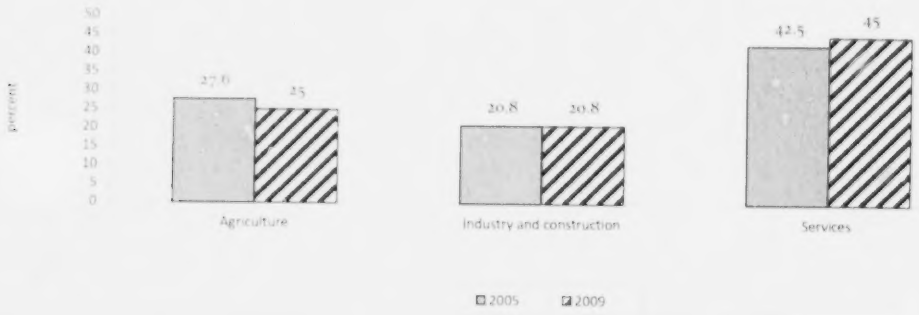
32. The GDP growth trend since the 1990s has been rising, except for food crisis, power crisis and lately, the global economic and financial crisis. Since 2005, the GDP annual growth rate in the United Republic of Tanzania averaged 7 percent, which is in line with NSGRP target of 6–8 per cent per annum. In 2009 however, GDP growth was 6.0 percent, the decline being partly due to the global financial crisis. As a result of the crisis, volume and prices of exports went down, flows of capital and investment fluctuated, and tourist and demand for tourism products were reduced. These effects worsened the balance of payments and exerted inflationary pressures on the economy. The severity of the impact of this slow-down in GDP will, however, vary between sectors. Indeed, those sectors which are either export or import intensive will suffer most. Tourism and mining have already shown signs of slowdown.

33. The structure of the economy of the United Republic of Tanzania in terms of GDP composition has been changing gradually (which is also the case with sectoral employment proportions, according to the ILFS 2006). The share of agriculture in GDP and its proportion in total employment has been declining relative to the services sector, and manufacturing and construction (taken together). However, the majority of Tanzanians still depend on agriculture for their livelihoods. Services constitute the main sector of the economy, and its growth will continue to be critical for sustaining higher economic growth.

(a) Agriculture

34. Agriculture is still dominated by small-scale farmers; about 70 per cent of farming is dependent on the hand hoe, 20 per cent on ox ploughs, and 10 per cent on tractors. Notwithstanding this, the sector has been identified as a growth driver. Due to its diverse climatic zones it has potential for many crops, livestock and forestry products, sufficient water for both irrigation and livestock, and large size of arable land. Thus, given its role in supporting the rural poor and in reducing malnutrition, it has the potential for lifting many of them out of poverty. Moreover, food demand from the neighbouring countries indicates opportunities for increased food exports to these countries. Figure 2 shows shares of major sectors in GDP 2005 and 2009.[18]

Figure 2
Shares of major sectors in GDP 2005 and 2009



Source: Ministry of Finance and Economic Affairs (2010) Guidelines for the Preparation of Medium Term Plan and Budget Framework for 2010/11–2012/13.

35. Agriculture growth averaged about 4 per cent between 2005 and 2008. The sector's sluggish growth is a result of a combination of many challenges. These include poor infrastructure to support agriculture, inadequate extension services, poor technology of production, low value addition, lack of appropriate financing mechanisms for agriculture, unreliable market, unfair and uncompetitive farm gate prices, and environmental degradation. In Zanzibar the agricultural sector grew by 3.6 per cent in 2013 compared to 2.0 per cent in 2012 and contributed to 31.0 per cent of GDP. In addition, the livestock sector in Zanzibar grew by 3.1 per cent in the same period and contributed about 3.8 per cent of the GDP.

(b) Fisheries

36. The fisheries sector has maintained modest growth since 2000, attaining a rate of 5 per cent in 2008. It then declined to 2.7 per cent in 2009. The United Republic of Tanzania has immense fishery resource potential — both in fresh and marine waters, which if unleashed would contribute to improving the stakeholders' livelihoods, including their nutrition. The main challenges include illegal fishing and trafficking of fish and fisheries products across borders, which reduce the sector's contribution to growth and reduction of poverty and undermines its sustainable development. Specific constraints for small and medium scale fishing include credit facilitation, resource degradation, and poor fishing

[18] Zanzibar Economic Survey 2013.

technologies. In Zanzibar the fisheries sector grew by 4.4 per cent in 2013 compare to 2.3 per cent in 2012 and contributed about 7.1 per cent of the GDP in 2013.[19]

(c) Manufacturing

37. Manufacturing development constitutes an integral part of industrial transformation to facilitate growth and generation of employment. The sector's forward and backward linkages facilitate improvements of other sectors, for example, agriculture and mineral sectors; in turn, these linkages will spur more growth in the manufacturing sector itself. Hence, manufacturing has potentials for driving growth and employment. In 2009, it grew by 8.0 percent, compared to growth rate of 9.9 per cent in 2008, mainly due to the global financial crisis. Despite this relatively good performance, the sector is constrained by high costs of doing business and bureaucratic and infrastructure impediments, the latter mainly due to unreliable supply of utilities (water, power, etc.), leading to capacity underutilization; ineffective transport networks and other information and communications technology (ICT) and Science, Technology and Innovation infrastructure; and small domestic markets, with intense import competition, and inadequate export drive. The manufacturing sector in Zanzibar declined from 9.1 per cent in 2012 to 8.2 per cent in 2013 and contributed 11.7 per cent of the GDP.[20]

(d) Mining

38. The United Republic of Tanzania has deposits of gold, diamond, tanzanite, ruby, tin, copper, nickel, iron, phosphate, gypsum, coal, natural gas and potential for petroleum extraction. Mining involves large and small scales, both of which are important. Before 2007, the sector grew at about 15 per cent annually, which dropped to 2.5 per cent in 2008 and further to 1.2 per cent in 2009 due to the decline in export of diamonds and gold production (as the largest gold mine faced serious infrastructural problems). Such wide fluctuations in growth are one of the challenges facing the sector. Other challenges include weak linkages between the sector and local supply chains, hence low domestic value addition; limited multiplier effects and employment creation; environmental-related conflicts; and technical and institutional capacities for effective management of the sector. Nevertheless, the vast mineral deposits in the country point to a high potential of the sector's contribution to growth and socioeconomic transformation. Hence, the sector has been identified as a driver of growth.

(e) Tourism

39. The United Republic of Tanzania has some of the world's finest tourist attractions and game reserves. Equally famous are trekking expeditions (notably Mount Kilimanjaro) and coastal tourism. These attractions, among others, qualify tourism as a growth sector, as they offer immense opportunities for expansion of the sector. One way of finding out whether growth is broad-based and pro-poor is to assess its implication to employment. A growth that generates mass employment tend to be broad based and quite likely pro-poor too. According to the Zanzibar Human Development Report of 2009 e employment elasticity of growth for Zanzibar for 2007 and 2008 showed that employment elasticity of growth is higher in the private sector than in the public sector; this means that efforts to revitalize the private sector would be good for employment generation. MKUZA II has a specific goal that targets the promotion of a vibrant private sector for broad-based and pro-poor economic growth.

[19] Ibid.
[20] Ibid.

40. The 2009 Zanzibar Human Development Report further showed that tourism, which is one of the drivers of growth in Zanzibar, has not generated as much employment as would be required and there is a feeling among the local communities that it is people from outside Zanzibar that are benefiting from the employment opportunities generated in the tourism industry, leaving the local community to bear the full brunt of the environmental and cultural costs of tourism. MKUZA II also strategizes on increasing the share of local horticulture products such as vegetables in the local tourism market to ensure the spread of the benefit to the largest section of the population through Multiplier effects.

41. This explains the risks of its reliance on foreign tourists (domestic tourism is rather small), which makes it susceptible to swings of the global economy. The sector also faces insufficient technical, managerial, and entrepreneurial skills for a modern tourism industry and infrastructural bottlenecks and poor tourist supporting services (health, finances, insurance, ICT, etc.), which have resulted in substantial under-exploitation of the nation's tourism potential. Addressing these constraints will lead to expansion of not only natural resource based tourism, but also cultural tourism, sports tourism, and conference/convention tourism. Institutional set-ups in dealing with tourism sector, e.g. hunting block rights, need to be reviewed and strengthened. The tourism sector in Zanzibar recorded a growth rate of 7.1 per cent in 2013, contributing to 20 per cent of the GDP and 80 per cent of foreign exchange earnings.

(f) Infrastructure development

42. There have been modest improvements in growth-related infrastructure such as roads, ports (sea and air), energy, but there has been little progress in the railway sector. The percentage of roads in fair and good conditions has increased since 2005, but the time taken to discharge cargos at the ports has declined. Installed energy production capacity has increased but lagged behind the growth in demand; exploration of fossil fuel continues. However some challenges need to be addressed, including frequent power shortages, port congestion, and poor conditions of rural roads. The United Republic of Tanzania could act as a regional transport, trade and logistic hub if it were to exploit its advantageous geographical location and immense potential for power generation. Other challenges include congestion in cities, high construction costs, climate change (leading to destruction of infrastructure and life span of the infrastructure), as well as environmental issues in construction sites. At local level, small scale infrastructure development has been facilitated by community participation in the construction of small dams and bridges, etc through various programs such as TASAF, the Participatory Agricultural Development and Empowerment Project, etc. Among the challenges in MKUKUTA II is how to scale up such community contribution.

43. In respect of Zanzibar, infrastructure constitutes transport namely roads, airports and seaports; communication, which includes ICT and telecommunications. There is also energy infrastructure incorporating the electrical and other energy related facilities. In Zanzibar the road network has about 1,189 km, 668 km of which are paved roads and the remaining are either gravel or earth roads.

II. General framework for the protection and promotion of human rights

44. The State party protects and promotes human rights through the Constitutions of Zanzibar (1984) and that of the United Republic of Tanzania (1977). In both constitutions, the Bills of Rights were incorporated in 1984. The incorporation of the Bills of Rights in the Tanzanian Constitution and the Zanzibar Constitution in 1984 was in compliance with the rule of international law that requires States parties to international human rights treaties

to establish robust human rights protection mechanisms at the municipal level. On both the Mainland and Zanzibar, the Bills of Rights enshrine basic rights and fundamental freedoms to which every person is entitled.

45. In respect of Tanzania Mainland, the enabling law on the enforcement of the Bill of Rights is the Basic Rights and Duties Enforcement Act (1994),[21] which makes provision for procedures for the enforcement of the justifiable fundamental rights and freedoms in the Constitution of the United Republic of Tanzania. Under Section 1(2), this Act covers all claims and causes of action founded on the provisions of Articles 12 to 29 of the Constitution in relation to the basic rights, duties and fundamental freedoms.[22] It also vests the High Court of Tanzania with original jurisdiction in cases relating to fundamental rights and freedoms.[23]

46. Section 4 of the Basic Rights and Duties Enforcement Act provides that if "any person" alleges that any of the provisions of sections 12 to 29 of the Constitution has been, is being or is likely to be contravened in relation to him, he may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the High Court for redress. Reference to "any person" implies that every person, including a child, may bring a petition to the High Court for redress in the event that any of the basic rights and fundamental freedoms enlisted in the Bill of Rights is violated or is about to be violated. In this case, the High Court has power to make all such orders as shall be necessary and appropriate to secure the applicant the enjoyment of the basic rights, freedoms and duties conferred or imposed on him under the provisions of sections 12 to 29 of the Constitution.[24] Appeals against decisions of the High Court are lodged in the Court of Appeal of Tanzania for further remedies.

47. In respect of Zanzibar, cases of violations of the basic rights and fundamental freedoms enlisted in the Bill of Rights are lodged in the Zanzibar High Court, whereby any person, including a woman, can petition the Court for redress. Unlike in Tanzania Mainland, in Zanzibar there is no procedural or enabling law for regulating the procedure of the High Court in determining cases of violation of human rights.[25] However, the Constitution itself caters for this matter; whereby an appeal against the decision of the High Court is not referred to the Court of Appeal of Tanzania, but is referred to a panel of three High Court Judges solely appointed by the Chief Justice of Zanzibar to entertain an appeal under Article 24 (3) of the Zanzibar Constitution (1984).[26] A judge who had previously heard the same petition at its first instance is excluded from sitting on the panel.

48. In Zanzibar the Kadhi's Court, which is established under the Kadhi's Court Act (1985),[27] has jurisdiction to determine issues relating to divorce, marriage, maintenance and personal status to those who subscribe themselves to Islam. The Kadhi's Courts are

[21] Cap. 3, R.E. 2002. This was done in accordance with a constitutional provision in the Bill of Rights — that is, Article 30(4) of the Constitution — which required the "state authority" to enact legislation for the purpose of regulating procedure for instituting proceedings pursuant to this Article, specifying the powers of the High Court in relation to the hearing of proceedings instituted pursuant to this Article, and ensuring the effective exercise of the powers of the High Court, the preservation and enforcement of the rights, freedoms and duties in accordance with this Constitution.

[22] Section 3 of the Basic Rights and Duties Enforcement Act (1994), Cap. 3 R.E. 2002.

[23] Ibid., Section 4.

[24] Ibid., Section 13(1).

[25] Lack of a law which describes the procedure for prosecuting cases of violation of human rights makes it difficult for these rights to be differentiated with other rights. However, the State Party is working on this challenge.

[26] 10th Amendment to the Constitution of Zanzibar, 2010.

[27] No. 3 of 1985.

established in every locality and are presided over by Muslim scholars applying Islamic Laws only. However, the operation of the Kadhi's Courts faces a number of challenges, including lack of rules of procedure, non-admission of advocates in proceedings before the Kadhi's Courts and lack of clear qualification for a person to be officers of the Kadhi's Court. Currently the State party (through the Revolutionary Government of Zanzibar) is reviewing the existing Kadhi's Court Act in order to address these challenges.

III. Non-discrimination and equality

49. The State party upholds principles of non-discrimination and equality. The principles have been enshrined in the Constitution of the United Republic of Tanzania and the Zanzibar Constitution as well as in the State party's statutory law.

A. Constitutional prohibition of discrimination

50. The Constitution of the United Republic of Tanzania (1977) and the Constitution of Zanzibar (1984) prohibit discrimination of any kind in Articles 13(5) and (6) and Article 12(4) and (5), respectively. Grounds of discrimination include discrimination on the basis of: nationality, tribe, place of origin, political opinion, colour, religion, or station of life. However, positive discrimination is permissible where certain categories of people are regarded as being disadvantaged in accessing their rights.[25]

B. Policy prohibition of discrimination

51. Discrimination of persons, including children, is also prohibited by various policies relating to children. In Tanzania Mainland, the Tanzania Child Development Policy (2nd edition, 2008) prohibits discrimination of children in two contexts: discrimination based on gender and discrimination basing on the child's station of life. The National Education Policy and the National Policy on Disability (2004) also prohibit discrimination. In particular, the National Policy on Disability envisions that: "Tanzania values human rights and equality of all citizens. Every citizen has the right under the law to participate freely in activities beneficial to himself or herself and society as a whole. Every citizen, including people with disabilities, have an equal right to receive basic needs from the society" without discrimination based on any of the listed grounds, including disability.

52. In Zanzibar, the Child Survival, Protection and Development Policy of 2001 prohibits discrimination of children on any of the listed grounds: status, origin, religion, economic status or disability. The Zanzibar Education Policy of 2006 recognizes and protects the rights of children with disabilities. For instance, in Chapter Four, the Policy seeks to ensure that children with disabilities are able to access education on an equal footing with those without disabilities. In addition, the Policy states that:

- Inclusive education shall be promoted to ensure that children with special needs (which include children with disabilities) get equal opportunities; barriers to learn are addressed and diverse range of learning needs are accommodated;
- Slow learners and highly gifted children shall be identified and given opportunities to learn at their own pace; and

[25] Article 13(5) of the Constitution of the United Republic of Tanzania (1977) and 12(5) of the Constitution of Zanzibar (1984).

- Children with disabilities and others with special needs shall, to the greatest extent possible, be able to attend a local where they will receive quality education alongside their peer without disabilities/special needs.

This policy sets out strategies that facilitate the realization of the stated objectives which include, inter alia, identifying children with special needs at an early age and assessing their education and health needs.

53. The Zanzibar Health Policy of 2009 is one of the State party's tools, which aim at addressing the issues pertaining to health. It envisages the notion of quality health services to all people of Zanzibar including the vulnerable and disadvantaged one and ensures that their rights to health as special needs are guaranteed. The strategies to realize this goal include: mapping out the profiles and special needs of various disadvantaged groups, including children with disabilities; and working with the health institutions to ensure those who are unable to pay for service fees in health canters such fees are waived so that they receive health services free of charge. The Zanzibar Women Development Policy (2001), which is currently under review, prohibits any kind of discrimination to women at all levels.

C. Statutory prohibition of discrimination

54. The State party has enacted a number of laws that prohibit discrimination with a view to guaranteeing equality of all persons, including children. The laws prohibit discrimination in the following categories:

1. Prohibition of discrimination in the workplace

55. Section 7(1) of the Employment and Labour Relations Act (2004)[29] prohibits discrimination in the workplace. The grounds for discrimination are set out in subsection (4) of section 7 of the Employment and Labour Relations Act, including: colour, nationality, tribe or place of origin, race, national extraction, social origin and political opinion or religion. Others are sex, gender, pregnancy, marital status or family responsibility, disability, HIV/AIDS, age, and station of life. This list of grounds of discrimination is not exhaustive and is expanded under Rule 28(2) of the Employment and Labour Relations (Code of Good Practice) Rules (2007) (the Code of Good Practice) to include other categories of discrimination. The Zanzibar Employment Act (2005) and the Zanzibar Persons with Disabilities (Rights and Privileges) Act (2006) provide in similar effect.

56. Under rule 31 of the Code of Good Practice, discrimination may be direct or indirect. Direct discrimination "occurs where an employee is treated prejudicially on the listed grounds referred to in Rule 30."[30] Indirect discrimination occurs "where a requirement or condition, which on the face of it, appears to be neutral, has the effect of discriminating against a person or category or persons on the grounds listed in Rule 30."[31]

[29] Act No. 6 of 2004.
[30] Rule 31(2) of the Code of Conduct.
[31] Ibid., rule 31(3).

2. Prohibition of discrimination on the basis of HIV/AIDS

(a) Prevalence of discrimination in the workplace on ground of HIV/AIDS

57. The advent of HIV/AIDS in Africa has been responsible for a number of human rights issues, common amongst which being the question of discrimination of persons affected by or infected with the disease. Largely, HIV/AIDS has been deemed as a disease befalling those individuals who are promiscuous. Based on the fact that promiscuity is a taboo in most African customary norms, those affected by or infected with the viral disease have also been stigmatised.

58. This stigma has faced persons from different walks of life affected by or infected with the viral disease, including those who are in employment. Over the time since HIV/AIDS was for the first time diagnosed in 1983 in the United Republic of Tanzania, persons who are affected by or infected with this viral disease have been constantly discriminated. Stigmatization of persons affected by or infected with the viral disease has been taking several forms and at different stages of the socioeconomic relations process. At the recruitment stage, for instance, employers have been discriminating against prospective employees through "involuntary" HIV testing; and, where a prospective employee tests positive, then the employer would not consider such prospective employee for employment. In some cases, ongoing employees' contracts have been terminated because they have tested positive.

59. Discrimination of persons based on their HIV/AIDS status contravenes provisions of international human rights instruments as well as against the provisions of Article 13(5) and (6) of the Constitution of the United Republic of Tanzania and provisions of the Employment and Labour Relations Act as well as sections 28 to 32 of the HIV/AIDS (Prevention and Control) Act (2008).

(b) Prohibition of stigma and discrimination against persons with HIV/AIDS

60. Section 31 of the HIV/AIDS (Prevention and Control) Act (2008) prohibits any kind of stigma and discrimination against any person on actual, perceived or suspected HIV/AIDS status. In particular, section 28 prohibits a person (natural or juristic) to formulate a policy, enact any law or act in a manner that discriminates directly or by its implication persons with HIV/AID, orphans or their families. In addition, section 29 obliges any health practitioner, who deals with persons living with HIV/AIDS, to provide health services without any kind of stigma or discrimination. Similar provisions are also enacted in the Zanzibar HIV Act (2014).[32]

61. Under this law, a person shall not deny any person admission, participation into services or expel that other person from any institution on ground that the person's actual, perceived or suspected HIV/AIDS status. Denial is also prohibited in respect of restricting a person to travel within or outside the United Republic of Tanzania; employment opportunity; residing anywhere or right of residence on such grounds.[33] A person who contravenes the foregoing prohibition commits an offence and on conviction shall be liable to a fine of not less than two million Tanzanian shillings or to imprisonment for a term not exceeding one year or to both.[34]

[32] Act No. 18 of 2014.
[33] Ibid., Section 30.
[34] Ibid., Section 32.

(c) Prohibition of discrimination in the workplace on ground of HIV/AIDS in the United Republic of Tanzania

62. In recognition of the international commitment to eliminate discrimination in the workplace on the ground of HIV/AIDS, the United Republic of Tanzania has incorporated provisions prohibiting discrimination of employees infected with and/or affected by HIV/AIDS in the workplace. In this regard, Section 7(1) of the Employment and Labour Relations Act prohibits discrimination in matters related to work on a number of grounds including HIV/AIDS.[35] Progressively, this law criminalises all acts of discrimination in subsection (7) Section 7. In particular, under the HIV/AIDS (Prevention and Control) Act (2008)[36] and the Zanzibar HIV/AIDS Act discrimination of a person on the grounds of HIV/AIDS status is prohibited. In particular, Section 30(c) prohibits discrimination of persons affected by or infected with HIV/AIDS at the workplace.[37]

63. The State party has expanded HIV prevention testing, care and treatment services and monitoring of disease trends in risk-prone and general population. As a result, HIV/AIDS prevalence remained low at 0.6 per cent throughout. Compared to most Sub-Saharan African countries, this is possibly the lowest rate. The period also witnessed improvement of health of our mothers and children. The Infant Mortality Rate has dropped from 54 per 1000 live births in 2007/08 to 45 per 1,000 live births in 2012, the Under-Five Mortality Rate dropped to 79 per 1,000 live births in 2007/08, down from 101/1,000 live-births in 2004/05. Also, the Maternal Mortality Rate decreased to 432 per 100,000 live births in 2012[38] from 454[39] and 578 deaths per 100,000 in 2010 and 2004/5 respectively. Zanzibar in recent years has made important progress in introducing and sustaining the delivery of key nutrition services for children. Vitamin A supplement and de-worming tablets are provided to the under-five children twice a year with over 90 per cent coverage.

64. Under rule 31 of the Code of Good Practice, discrimination may be direct or indirect. Direct discrimination "occurs where an employee is treated prejudicially on the listed grounds referred to in Rule 30."[40] Indirect discrimination occurs "where a requirement or condition, which on the face of it, appears to be neutral, has the effect of discriminating against a person or category or persons on the grounds listed in Rule 30."[41]

3. Prohibition of discrimination under the Persons with Disabilities Act

65. In Tanzania Mainland, the State party enacted the Persons with Disabilities Act (PDA) in April 2010 in order to give legal effect to the National Policy on Disability and the Convention on the Rights of Persons with Disabilities. It strives "to make provisions for the health care, social support, accessibility, rehabilitation, education and vocational training, communication, employment or work, promotion of basic rights for the persons with disabilities and to provide for related matters."[42] Prohibition of discrimination against persons with disabilities is one of the principles underlying the Persons with Disabilities Act.[43] The PDA imposes an obligation on the Minister responsible for social welfare to

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[35] See Section 7(4) of the Employment and Labour Relations Act.
[36] Act No. 28 of 2008.
[37] Similar provisions are also contained in the Employment and Labour Relations Act, and the Zanzibar Employment Act.
[38] 2012 Census Report.
[39] 2010 TDHS.
[40] Rule 31(2) of the Code of Conduct.
[41] Ibid., rule 31(3).
[42] See the long citation of the PDA.
[43] Ibid., Section 4(a).

"take appropriate steps to ensure the realisation of all rights and freedoms of persons with disabilities without discrimination."[44]

66. In particularly, the PDA contains a very strongly-worded non-discrimination principle in Section 6.[45] Similar provisions are also enacted in the Zanzibar Persons with Disabilities (Rights and Privileges) Act (2006) to provide for similar effect as with the PDA.

4. Prohibition of discrimination under the Law of the Child Act (2009) and the Zanzibar Children's Act (2011)

67. Under Section 5(1) of the Law of the Child Act and Section 6(1) of the Zanzibar Children's Act, a child "shall have a right to live free from any discrimination." In a similar construction, the two sections enlist the grounds of discrimination against the child as follows: gender, race, age, religion, language, political opinion, disability, health status, custom, ethnic origin, rural or urben background, birth, socioeconomic status, being a refugee or of other status.[46]

D. Judicial protection of the right to non-discrimination

68. The principle of non-discrimination (equality) has been given due judicial consideration in many cases in the State party, including *Julius Ishengoma Francis Ndyanabo* v. *Attorney General*,[47] where the Court of Appeal of Tanzania held that discrimination as described in Article 13(5) may be committed not only by or against a natural but also juristic person. This judicial authority was cited with approval by the High Court in *Legal and Human Rights Centre, Lawyers Environmental Action Team & National Organisation for Legal Assistance* v. *Attorney General*,[48] where Kimaro, J. (as she then was) held that whereas Article 13(1) guarantees the right to equality before the law,[49] Article 13(2) prohibits the enactment of law which is directly discriminatory or discriminatory in effect.

IV. The right to an effective remedy

69. The State party, being a member to a number of international and regional human rights instruments, adheres to guaranteeing its citizens' realisation of the right to an effective remedy as amplified in international law. At the procedural level, the State party has established judicial bodies (in the form of ordinary courts, national human rights institution and quasi-judicial tribunals), which decide on the complaints of victims of alleged human rights violations. Through these judicial bodies, the State party ensures that

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[44] Ibid., Section 5(1).

[45] Section 6 of this obliges the Government to ensure that all persons with disabilities are equal under this law, and that all persons with disabilities "are fully entitled without any discrimination to the equal protection and benefit of this Act"; and to prohibit all forms of discrimination on the basis of disability and guarantee the persons with disabilities equal and effective legal protection against discrimination on all grounds. For purposes of promoting equality and elimination of all forms of discrimination, the Government is obliged to undertake "all appropriate measures to ensure that reasonable changes is provided to persons with disabilities of all ages and genders".

[46] See Section 5(2) of the Law of the Child Act, and section 6(1) of the Zanzibar Children's Act.

[47] Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No. 64 of 2001 (Unreported).

[48] High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 77 of 2005 (Unreported).

[49] See also *Rukia M. Utope* v. *The Principal Secretary, Ministry of State (Women and Children)* High Court of Zanzibar at Zanzibar, Miscellaneous Civil Application No. 15 of 1999 (unreported).

both penal and civil courts grant effective remedies to victims of violations of human and legal rights.

A. Courts of law

70. In Tanzania Mainland, the Judiciary is a constitutional creature, mandated to interpret laws of the country. Under Article 107A of the Constitution of the United Republic of Tanzania it is provided that: "The Authority with final decision in the dispensation of justice in the United Republic shall be Judiciary". The court system in Tanzania Mainland is founded on the English common law system, with courts at different ladders of the judicial system being established by the Constitution or relevant laws. At the apex level of the judicial hierarchy is the Court of Appeal of Tanzania,[50] followed down by the High Court of the United Republic of Tanzania[51] (usually called the High Court of Tanzania), under which are the Resident Magistrate Courts and District Courts, which have concurrent jurisdiction. At the lowest level are the Primary Courts.[52]

71. Whereas the Primary Courts, District Courts and Resident Magistrates' Courts are presided over by magistrates appointed by the Judicial Services Commission of Tanzania,[53] the Judges of the High Court and the Justices of (the Court of) Appeal are appointed by the President of the United Republic, in consultation with the Judicial Services Commission of Tanzania.[54] Whereas the Court of Appeal is headed by the Chief Justice, the High Court of Tanzania is headed by the Principal Judge (known in Kiswahili as *Jaji Kiongozi*). Both the Chief Justice and the Principal Judge are appointed by the President of Tanzania.

72. Appeals from Primary Courts in Tanzania Mainland are processed through the District Courts, the High Court and then the Court of Appeal. Appeals from the Resident Magistrates' Courts and District Courts are processed through the High Court and then the Court of Appeal.

73. The State party has ensured that the foregoing judicial system operates independent of any kind of interference which is the bedrock of an effective judicial system that effectively protects and promotes human rights in its jurisdiction. This independence is exhibited in the way judicial officials are appointed, whereby they take an oath to the effect that they would administer justice without fear or favour; conduct themselves in relation to the administration of justice and the procedure for termination of the judicial services. The State party follows the common law system of terminating of services of judicial officers that prevents the Executive to take a leading role; rather a panel of experts from the Commonwealth should be involved in the investigations and recommendations on whether or not to terminate such services.

74. Adhering to the international law principle that legal remedy against human rights violations is primarily to be ensured at the national level, the State party has a court system that functions from the grassroots to the national level in both Tanzania Mainland and Zanzibar.

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[50] The Court of Appeal of Tanzania is established under Article 117 of the Constitution of the United Republic of Tanzania (1977). See also the Appellate Jurisdiction Act (1979), Cap. 141 R.E. 2002.

[51] See Article 108 of the Constitution of the United Republic of Tanzania.

[52] Primary Courts, District Courts and Resident Magistrates' Courts are established under the Magistrates' Court Act (1984), Cap. 11 R.E. 2002.

[53] See Article 113(1) of the Constitution of the United Republic of Tanzania.

[54] Ibid., Articles 109 and 118.

75. In Zanzibar, there is a dual court system applying different laws and procedures: the common law system founded on the English legal system; and the Kadhi's Courts[55] administering Islamic laws relating to personal related matters: i.e., marriage, divorce, inheritance, maintenance and custody of children. The judicial hierarchy of Zanzibar is such that at the lowest level there are Primary Courts,[56] then the District Courts,[57] Regional Magistrates' Courts[58] and at the apex is the High Court of Zanzibar.[59] Zanzibar shares the State party's Supreme Court — the Court of Appeal of Tanzania[60] — with its counterparty (Tanzania Mainland). The Court of Appeal hears all appeals from the High Courts of Zanzibar and the one for Tanzania Mainland.[61] However, the Court of Appeal of Tanzania has no power to hear appeals emanating from the decision of the High court of Zanzibar in respect of enforcement of human rights and in matters originating from the Kadhi's Courts.[62]

76. The Kadhi's Court hierarchy is such that at the lowest level is the District Kadhi's Court, followed up the ladder by the Chief Kadhi's Court and the High Court of Zanzibar, which is the apex appeal court for matters originating the District Kadhi's Court. When hearing matters relating to the Kadhi's Courts, the High Court of Zanzibar should be presided over by a High Court Judge sitting with a panel of *ulamaa*, who are assessors with sufficient knowledge on Islamic law and are there to assist the judge reach a fair and just decision in the context of Islamic law.[63]

77. Whereas subordinate courts (i.e. Primary Courts, the District Courts, and Regional Magistrates' Courts) are presided over by magistrates appointed by the Judicial Services Commission,[64] the High Court of Zanzibar is headed by the Chief Justice of Zanzibar appointed by the President of Zanzibar. The High Court of Zanzibar is presided over by judges appointed by the President of Zanzibar upon recommendation by the Judicial Services Commission.[65]

B. Quasi-judicial bodies or tribunals

78. In addition to formal court systems, the State party has quasi-judicial bodies or tribunals which have powers resembling those of a court of law or judge. Quasi-judicial bodies or tribunals are mainly individuals or organizations, with capacity to settle legal disputes by providing remedies to aggrieved parties and imposing legal penalties against a person(s) or organization(s). These bodies are essentially sector-specific: for instance, the labour, industrial and land dispute settlement bodies in Tanzania Mainland and Zanzibar.

[55] See particularly the Kadhi's Court Act, Act No. 3 of 1985.
[56] See the Magistrates' Courts Act, Act No. 6 of 1985.
[57] Ibid.
[58] Ibid.
[59] The High Court of Zanzibar is established under Article 93 of the Zanzibar Constitution (1984). See also the High Court Act, Act No. 2 of 1985.
[60] The Court of Appeal of Tanzania is established under Article 117 of the Constitution of the United Republic of Tanzania (1977). See also the Appellate Jurisdiction Act (1979), Cap. 141 R.E. 2002.
[61] See particularly Sections 3 and 4(1) of the Appellate Jurisdiction Act.
[62] See Article 99(b) of the Zanzibar Constitution (1984).
[63] See section 10 of the Kadhi's Court Act (1985).
[64] See Section 10(1) of the Magistrate Courts Act (1985).
[65] See Article 94 of the Zanzibar Constitution (1984).

1. Labour dispute settlement bodies

79. In Tanzania Mainland, the State party has also established labour dispute settlement bodies to determine all disputes arising from employment and labour relations. The mechanism for settling labour disputes is more or less formal compared to civil cases. Usually, labour disputes commences with mediation[66] conducted under the auspices of the Commission for Mediation and Arbitration (CMA).[67] Where mediation fails as was held by the Labour Court in *Salim Kitojo* v. *Vodacom (T) Ltd.*,[68] the matter should be referred to arbitration[69] conducted under the Commission for Mediation and Arbitration (CMA) and later to the Labour Court.[70]

80. The power to appoint mediators and arbitrators is vested in the CMA under section 19(1) of the Labour Institutions Act (2004), in consultation with the Office of the Public Service Management.[71] The CMA shall have regard to the need to constitute an independent and professional body in appointing mediators; and it shall prepare a code of conduct[72] for the said cadre, together with arbitrators serving on the CMA.[73] Between 2007 and 2011, the State party managed to establish a CMA office in every region in Tanzania Mainland. This means that all persons or institutions with labour disputes can easily access the CMA to resolve their disputes.

81. The number of Judges to constitute the Labour Court may be determined by the Chief Justice where he considers necessary; but one of the judges shall be designated by Chief Justice as "Judge In-Charge". The Judge In-Charge shall head the labour Court and shall designate any Judge to be in charge of any court zonal centre.[74] The Labour court shall also consist of two panels of assessors appointed in terms of section 53 of the LIA.[75] The Coram of the Labour Court shall be constituted by a Judge sitting with at least two assessors nominated by the presiding Judge from each of the panels appointed in terms of subsection (2)(b) of section 50 of the Labour Institutions Act.[76] However, it is not necessary for the Judge to sit with assessors in certain circumstances. This may happen where the Judge determines an application the Labour Court[77]; where the parties to the dispute have agreed that the assessors are not necessary[78]; or if it is necessary for the expeditious determination of proceedings.[79]

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[66] See Rule 20(1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, GN. No. 67 of 2007. These Rules are made under Section 15(1)(f) of the Labour Institutions Act, Act No. 7 of 2004.

[67] The Commission for Mediation and Arbitration (CMA) is established under section 12 of the Labour Institutions Act (2004).

[68] High Court of Tanzania (Labour Division) at Dar es Salaam, Labour Division No. 5 of 2010 (Unreported).

[69] Section 86(7)(b)(i) of the Employment and Labour Relations Act, and Rule 18(2) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules (2007).

[70] Labour Division of the High Court of Tanzania (henceforth, "the Labour Court") is established under section 50(1) of the Labour Institutions Act (2004).

[71] Section 19(2) of the Labour Institutions Act.

[72] See the Labour Institutions Act (Ethics and Code of Conduct for Mediators and Arbitrators) Rules (2007), GN. No. 66, dated 23rd March 2007.

[73] Section 19(3) and (4) of the Labour Institutions Act (2004).

[74] Ibid., Section 50(2)(a).

[75] Ibid., Section 50(2)(b).

[76] Ibid., Section 50(3).

[77] Ibid., Section 50(3)(a).

[78] Ibid., Section 50(3)(b).

[79] Ibid., Section 50(3)(c).

82. The jurisdiction of the Labour Court is spelt out in section 94 of the Employment and Labour Relations Act and section 51 of the LIA. Under these provisions, the Labour Court has exclusive jurisdiction over any matter reserved for its decision by the labour laws and over any employment matter falling under common law, tortuous liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court. In principle, "What this means is that if any party has any matter relating to labour laws the proper court of resort is the Labour Court, but this does not take away the general powers and jurisdiction of the High Court under the Judicature and Application of Laws Act."[80] In particular, the Labour Court has power to determine appeals from the decisions of the Registrar made under Part IV of the Employment and Labour Relations Act; reviews and revisions of the CMA arbitrator's awards; and decisions of the Essential Services Committee. The Labour Court also has exclusive jurisdiction to determine reviews of decisions, codes, guidelines or regulations made by the Minister under this Act[81]; and complaints, other than those that are to be decided by arbitration under the provisions of this Act.

83. When it started functioning in 2007 in Tanzania Mainland, the Labour Court had only one registry based in Dar es Salaam. It used to reach the upcountry regions of the United Republic of Tanzania through circuit sessions. However, in 2010 the Chief Justice, acting under the power given to him under rule 5 of the Labour Court Rules,[82] made the High Court of the United Republic of Tanzania Labour Court (Labour Division) (Zonal Centres) (Establishment) Rules (2010).[83] These Rules established a High Court Division Zonal Centre of the Labour Court in each region.[84] In Dar es Salaam, there was established a Zonal centre together with the main registry of the Labour Court.[85]

84. In Zanzibar, the Industrial Court is empowered to determine labour disputes referred to it under the Labour Relations Act (2005).[86] The Zanzibar Industrial Court is presided over by a judge appointed by the President of Zanzibar from amongst the judges or persons qualified to be judges of the High Court after consultation with the Chief Justice of Zanzibar.[87] When determining labour disputes, the judge sits with two assessors appointed by the Chief Justice from each of the panel of assessors submitted by employers' organisations and a federation of trade unions.[88]

85. Below the Zanzibar Industrial Court there is the Dispute Handling Unit[89] established by the Labour Commission to deal with all labour disputes referred to the Commission under the Labour Relations Act.[90] The Dispute Handling Unit determines labour disputes by first mediation[91]; and where mediation fails, by arbitration.[92]

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[80] *Tanzania Railway Ltd.* v. *The Minister for Labour, Employment and Youth Development & 2 Others* High Court of Tanzania (Labour Division) at Dar es Salaam, Application No. 4 of 2008 (unreported).
[81] Ibid.
[82] GN. No. 106 of 2007.
[83] GN No. 209 of 11 June 2010.
[84] Rule 2(1) of the High Court of the United Republic of Tanzania Labour Court (Labour Division) (Zonal Centres) (Establishment) Rules (2010).
[85] Ibid., Rule 2(2).
[86] Act No. 1 of 2005.
[87] Section 81(1)(a) of the Labour Relations Act (2005).
[88] Ibid., Section 81(1)(b).
[89] Labour Tribunal was instituted in 1994 Act. No. 7 (reviewed by Act No. 1 of 2008).
[90] Section 72(1) of the Labour Relations Act (2005).
[91] Ibid., Section 74(1).
[92] Ibid., Section 75(1).

86. As in all cases, being civil or criminal, decided by any court of law in the State party may be appealed against to the Court of Appeal of Tanzania. The right to appeal against decisions of the Labour Court to the Court of Appeal, in Tanzania Mainland, is created in section 57 of the Labour Institutions Act, which provides that: "Any party to the proceedings in the Labour Court may appeal against the decision of that Court to the Court of Appeal of Tanzania on a point of law only." This applies to Zanzibar, where the Labour Relations Act provides, in section 87(1), that any person aggrieved by any decision or order of the Industrial Court "may appeal against such decision to the Court of Appeal in accordance with the Court of Appeal Rules." The right of appeal in this regard guarantees an individual to seek further remedy if such individual is not satisfied with the decision of either the Labour Court (in Tanzania Mainland) or the Industrial Court (in Zanzibar).

2. Land dispute settlement bodies

87. The State party has established in both Tanzania Mainland and Zanzibar a separate system of dealing with land disputes from the ordinary civil courts. This separate land dispute settlement system is less formal compared to the complex civil procedures in the ordinary courts of law; and is intended to make it more accessible as well as comprehensible even to those citizens with less formal education. In accordance with section 62 of the Village Land Act (1999) and section 3 of the Courts (Land Dispute Settlement) Act (2002), land dispute settlement structure starts from the Village Land Council, the Ward Tribunal, The District Land and Housing Tribunal, the Land Division of the High Court and the Court of Appeal. Administratively, the Village Land Council and the Ward Tribunal fall under the Prime Minister's Office (Regional Administration and Local Government). Their lines of responsibility, is in accordance to the provisions of the Regional Administration and Local Government Act, 1997.

88. The District Land and Housing Tribunal handles land disputes at the district level. The administrative structure which also forms the lines of responsibility falls under the Ministry of Lands and Human Settlement Development. The Land Division of the High Court and the Court of Appeal of Tanzania form part and parcel of the Judiciary which is headed by the Honourable Chief Justice of the United Republic of Tanzania. The judiciary is under the Ministry of Constitutional and Legal Affairs. Although the judiciary is a department within the ministry of Justice, when it comes to the administration of justice, it stands independently forming the third pillar of government under the doctrine of separation of powers. It is within this scope that the judiciary is solely vested with powers to administer justice with its internal systems of hiring and firing judicial officers as per the Constitution and the Judicial Services Act.[43]

C. The Commission for Human Rights and Good Governance

89. The State party adheres to well-established principle of international law that national human rights institutions are pivotal in the promotion and protection of human rights at the municipal level. In translating this principle into practice the State party set up the Commission for Human Rights and Good Governance (CHRAGG), which is a national human rights institution established in 2000 vide the 13th Constitutional Amendment to the 1977 Constitution of the United Republic of Tanzania. It became operational in 2001 following the enactment and the coming into force of its founding statute, the Commission

[43] See, for instance, section 19 of the Judicial Services Act, Cap 237 R.E. 2002.

for Human Rights and Good Governance Act[94] (henceforth, the founding legislation). CHRAGG was officially inaugurated in mid-March 2002, following the appointment and swearing in of its Commissioners;[95] and it now has offices in both Tanzania Mainland and Zanzibar. CHRAGG started to operate in Zanzibar after the Zanzibar House of Representatives enacted the Commission for Human Rights and Good Governance (Extension) Act in 2003.

90. CHRAGG took over the functions of the defunct Permanent Commission of Enquiry, which was established in 1965, making it the first ombudsman to be established in Sub-Saharan Africa, with its primary duty being concerning investigation of abuse of authority (mal-administration). Thus, CHRAGG, apart from its mandate to deal with human rights issues, it is also concerned with addressing abuse of public authority.

91. The functions of CHRAGG are stipulated in Article 130 (1) of the Union Constitution as well as in section 6(1) of its founding legislation. Accordingly, the main core function of CHRAGG is to promote, protect and preserve human rights and duties of the citizens to the society. In other words generally, CHRAGG has four main functions, namely, the protective,[96] promotive,[97] advisory and mediatory/conciliatory functions. According to section 28(4) of the founding legislation, CHRAGG can resolve any complaint or rectify an act or omission emanating from a violation of any fundamental right or acts of mal-administration by mediation, conciliation or negotiation. When the Commission is involved in mediation or conciliation "it is acting in a quasi-judicial capacity."[98] The quasi-adjudicatory function of the Commission is particularly in relation to carrying out public hearings or enquiries. Mediation is a means to an end. It seeks to reconcile people. That is why the Commission has a role to play in conflict resolution by way of mediation, conciliation and adjudication, apart from investigating complaints and conducting enquiries into violations of human rights and contravention of principles of good governance."[99]

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[94] Cap. 391 R.E. 2002. This Act was amended by Act No. 16 of 2001. The Act came into force on 9th May 2001 vide Government Notice No. 67 of 4th May 2001.

[95] Kisanga, R.H., "The State of Human Rights in Tanzania – The Commission for Human Rights and Good Governance: Role, Constraints and Prospects," a paper presented at the Half-Annual General Meeting of the Tanganyika Law Society, Bagamoyo, 8th August 2003, p. 3.

[96] This function includes: receiving and investigating complaints and/or allegations on violation of human rights and contravention of principles of administrative justice, as well as conducting public hearings (enquiries) on the same, and giving remedies, initiating proceedings without being triggered off by anybody else, going to court to secure the enforcement of its recommendations and inspecting prisons and similar detention facilities.

[97] This function embodies such duties as educating the public on human rights and good governance issues [section 6(1)(d) of the founding legislation], carrying out research on human rights and good governance issues, and monitoring compliance with human rights standards and good governance principles [section 6(1)(e)].

[98] According to Justice (retired) Kisanga, "quasi-judicial" indicates something that "resembles a judicial function, but is distinct from this insofar as it rests with an administrative body. In this context the term refers to those functions of a national human rights institution, where complaints of human rights violations are *received, examined according to procedures reflecting principles of fairness and flexibility and in a manner appropriate to the nature of the complaint, by a body other than a judicial instance.*" Kisanga, R.H., H., "The State of Human Rights in Tanzania – The Commission for Human Rights and Good Governance: Role, Constraints and Prospects," op. cit, p. 16.

[99] Ibid., pp. 5–6.

92. In discharging its quasi-adjudicatory function CHRAGG is governed by both rules of procedure, evidence and its own set of Regulations[100] that have been made under the founding legislation,[101] though, for the sake of fairness and flexibility, it is not bound by the former. The decisions of the Commission have the status of recommendations. The Commission lacks the judicially binding power of the courts to enforce its recommendations. The Commission however, can go to court to enforce its recommendations if need be. CHRAGG may also delegate its function of commencing court proceedings to enforce its recommendations to another appropriate body.[102] So, CHRAGG has so far ensured that the promotion and protection of human rights in the State party are effective.

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[100] The Commission for Human Rights and Good Governance (Complaints Procedure) Regulations, 2003, which are made under section 38 of the Commission for Human Rights and Good Governance Act, No. 7 of 2001.

[101] In terms of section 20(2) of the founding legislation, CHRAGG is obliged to "observe the rules of natural justice but shall not be bound by any legal or technical rules of evidence applicable to proceedings before the courts; and all proceedings shall be conducted *informally* and expeditiously".

[102] Section 28(3) of the Commission for Human Rights and Good Governance Act. The Commission recommended an appropriate authority (Legal and Human Rights Centre, a Dar es Salaam-based human rights NGO) to bring an action in court to enforce its recommendations was in *Ibrahimu Korosso & 134 Others together with the Legal and Human Rights Centre* v. *District Commissioner and the Police Officer in Command of Serengeti District together with the Attorney General*, HBUB/S/1032/2002/2003/MARA